

FISA BACKGROUNDER: LIABILITY PROTECTION FOR THE TELECOMMUNICATIONS INDUSTRY

There are approximately 40 lawsuits currently pending against telecommunication providers for allegedly assisting the federal government in its surveillance efforts in the aftermath of September 11, 2001. This costly litigation punishes companies that may have patriotically assisted the government in protecting the American people. According to CQ Today, the “marquee difference” between the House and Senate FISA bills is “whether to provide retroactive liability protection for telecommunications companies that cooperated with a National Security Agency (NSA) warrantless surveillance program.”

“Another key part of the bill the Senate passed provided immunity from lawsuits to private companies that allegedly assisted U.S. intelligence agencies in monitoring suspected terrorists’ communications. At the time, the government assured the companies the monitoring was legal, but trial attorneys are suing for billions of dollars — and have contributed more \$1.5 million to Democrat coffers.” ([Intelligence Committee Ranking Republican Pete Hoekstra, 2/25/2008](#))

“Private party assistance is necessary and critical to ensuring that the Intelligence Community can collect the information needed to protect our country from attack.” (Joint letter from Director of National Intelligence McConnell and Attorney General Mukasey, 2/23/2008)

“What people have to understand here is that the quality of the intelligence we are going to be receiving is going to be degraded. It is going to be degraded as the telecommunications companies lose interest.” ([Floor Remarks of Sen. John D. Rockefeller IV \(D-WV\), Chairman of the Senate Intelligence Committee, 2/14/08](#))

“The intelligence community cannot go it alone. Those in the private sector who stand by us in times of national security emergencies deserve thanks, not lawsuits.” ([Director of National Intelligence Mike McConnell, 12/10/2007](#))

“Contrary to the assertions of some, the legal protections contained in S. 2248 bill do not confer blanket immunity. Rather, protections apply in limited and appropriate circumstances, as reviewed by a court.” ([Attorney General Michael Mukasey, 2/7/2008](#))

“[Director of National Intelligence Mike McConnell] wants to grant retroactive immunity to U.S. telecommunications companies that cooperated with government efforts to conduct warrantless surveillance of terrorists after the September 11 attacks. But there are approximately 40 lawsuits pending against these firms, and the lawsuits could prove to be a financial windfall for a favored Democratic Party constituency: trial lawyers.” ([Washington Times Editorial, 1/18/2008](#))

“We do not believe that these companies should be held hostage to costly litigation in what is essentially a complaint about administration activities.” ([Washington Post Editorial, 10/27/2008](#))

“Firms such as AT&T, Sprint Nextel and Verizon face lengthy litigation, and possibly hundreds of millions of dollars in damages, spearheaded by the ACLU all because they helped save lives. As Rockefeller -- a foe of most of the president's policies in the global war on terror -- pointed out, ‘The companies believed their cooperation was necessary, legal and would help stop future terrorist attacks.’” ([Investor's Business Daily Editorial, 2/19/2008](#))

“The act also wisely extended prospective immunity to communications providers that have worked with U.S. intelligence services to facilitate intelligence gathering for national security. With 40 or more civil

lawsuits already filed against these providers for their cooperation, Congress should take the logical, fair step and provide retroactive immunity as well." ([Heritage Foundation, 1/31/2008](#))

"[Telecommunications companies] have been targeted with dozens of lawsuits seeking hundreds of billions of dollars in damages for alleged violations of civil liberties. The mere threat of these suits could be enough to prevent the companies from further cooperation with the government, allowing trial lawyers and civil-liberties groups to eviscerate the terrorist-surveillance program by lawsuit." ([Salt Lake Tribune, 2/19/2008](#))

"The true reason for blocking the bill was Senate-passed retroactive immunity to protect from lawsuits private telecommunications firms asked to eavesdrop by the government. The nation's torts bar, vigorously pursuing such suits, has spent months lobbying hard against immunity." ([Washington Post, 2/18/2008](#))

"State, local and federal law enforcement and intelligence agencies rely heavily on timely and responsive assistance from communications providers and other private parties; indeed, this assistance is utterly essential to the agencies' functions. If carriers and other private parties run the risk of facing massive litigation every time they assist the government or law enforcement, they will lack incentives to cooperate, with potentially devastating consequences for public safety." ([Letter from a bipartisan group of 21 State Attorneys General, 12/11/2007](#))